

# **Exhibit 02**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - -

LONTEX CORPORATION, : Civil Action No.  
: 18-cv-5623  
Plaintiff and :  
Counterclaim-Defendant: :  
vs. :  
NIKE, INC., :  
Defendants and :  
Counterclaim-Plaintiff: :

- - -

THURSDAY, NOVEMBER 14, 2019  
VOLUME II  
HIGHLY CONFIDENTIAL

- - -

Continued Videotape Deposition of EFRAIM  
NATHAN, taken pursuant to Notice, at the law  
offices of DLA PIPER, LLP, One Liberty Place,  
1650 Market Street, Suite 5000 Floor,  
Philadelphia, Pennsylvania, commencing at  
approximately 7:39 a.m., on the above date,  
before Rose A. Tamburri, RPR, CM, CCR, CRR,  
USCRA Speed and Accuracy Champion and Notary  
Public.

- - -

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1 APPEARANCES:

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Representing the Plaintiff and

6 Counterclaim-Defendant,

7 Lontex Corporation

8  
9  
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12 and

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19 Representing the Defendant and

20 Counterclaim-Plaintiff, Nike

21  
22  
23 ALSO PRESENT:

24  
25 RUSS STRAIN, Videographer

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1 (Whereupon, the deposition  
2 commenced at 7:39 a.m.)

3 - - -

4 THE VIDEOGRAPHER: Good morning.  
5 We're now on the record. The time is  
6 approximately 7:39 a.m., Thursday,  
7 November 14th, 2019. Please note that the  
8 microphones are sensitive and may pick up  
9 whispers, private conversations and cellular  
10 interference. Audio and video recording will  
11 continue to take place unless all parties  
12 agree to go off the record.

13 This is Media Unit 1 of the video  
14 recorded deposition of Efraim Nathan, taken by  
15 counsel for the defendant, in the matter of  
16 Lontex Corporation versus Nike Corporation,  
17 filed in the U.S. District Court for the  
18 Eastern District of Pennsylvania, Case No.  
19 18-CV-5623.

20 This deposition is being held at  
21 the office of DLA Piper, located at 1650  
22 Market Street, Philadelphia, PA. My name is  
23 Russ Strain from Veritext. I'm the  
24 videographer. The court reporter is Rose  
25 Tamburri from Veritext. I'm not related to

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1 any party in this action, nor am I financially  
2 interested in the outcome.

3 Counsel will state their  
4 appearance and affiliation for the record,  
5 beginning with the noticing attorney.

6 MS. DURHAM: Gina Durham on behalf  
7 of Nike, Inc., and I have here with my -- me  
8 my colleague, Ben Fabens-Lassen, also from DLA  
9 Piper.

10 MR. WAGNER: Ben Wagner from  
11 Troutman Sanders, appearing on behalf of  
12 Lontex. Thank you.

13 THE VIDEOGRAPHER: Will the court  
14 reporter now please swear in the witness.

15 - - -

16 ...EFRAIM NATHAN, after having  
17 first been duly sworn and/or affirmed, was  
18 examined and testified as follows...

19 - - -

20 THE VIDEOGRAPHER: Thank you. We  
21 may proceed.

22 (Whereupon, a document was marked,  
23 for identification purposes, as Defendant's  
24 Exhibit 52.)  
25

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1                   Have you ever used the Cool  
2 Compression man logo on the care label?

3           A.    On the care label, the sewn inside  
4 label, no. The -- the -- the -- little man or  
5 little figurine is -- is really not a care  
6 label. You really, to stand out, you put  
7 it -- it's -- it's really adhesively goes on  
8 the garment --

9           Q.    Okay.

10          A.    -- on the bottom of the leg or on the  
11 thigh or on the bottom of the tights, or on a  
12 shirt on the chest. That's what reinforce it  
13 with heat, heat transfer -- we call it heat  
14 transfer label.

15          Q.    So when did you apply that heat  
16 transfer label to any garments?

17          A.    When we -- when we actually were  
18 thinking of -- of making the two lines of Cool  
19 Compression separate from Sweat It Out, when  
20 we were working on the Cool Compression  
21 website and were really thinking of moving in  
22 two direction with the same product, different  
23 packaging, different look, more sophisticated,  
24 at that time.

25                   So I would say, to answer by year,

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1 as I answered before, '07, '08. And after I  
2 decided not to, I stopped with the little  
3 figurine, but not with the Cool Compression  
4 care label. That was going in.

5 Q. Did you ever actually sell any of  
6 those products that had the heat label little  
7 man on them from the 2000 --

8 A. No.

9 Q. Let -- let me get my question out.

10 A. Yeah.

11 Q. Did you ever actually sell any of  
12 those products that had the heat label with  
13 the little man on it from the 2007/2008 time  
14 period?

15 A. Okay. That's very good you asked me  
16 to wait. Not with the Cool Compression  
17 packaging, the board that going inside, but we  
18 probably did sell with the Cool Compression  
19 insignia, it went in the packages with the  
20 Sweat It Out logo also.

21 So I real -- I -- I can't be sure,  
22 but we didn't put it on just to leave it in  
23 the office or leave it in the factory or in  
24 the warehouse. We definitely got rid of them,  
25 but not with the packaging of Cool

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1     Compression.

2           Q.     Okay. I just want to make sure I  
3     understand your answer.

4                     So I believe you told me that  
5     board packaging that shows the man logo was  
6     never used for any product that was sold;  
7     correct?

8           A.     Correct.

9           Q.     Then I believe you said, though,  
10    there may have been some products that had the  
11    heat label Cool Compression man on it that may  
12    have been sold somewhere, but you -- you don't  
13    really know when or where; is that correct?

14          A.     Yes. That was a long time ago. You  
15    don't expect me to remember what I did with  
16    them.

17          Q.     And I'm not sure I quite understand  
18    why sometimes you would just pull a Sweat It  
19    Out label for the special order products  
20    instead of Cool Compression?

21          A.     Because if you would know how I work,  
22    you would not even be surprised a minute. I  
23    could be jumping over a 96 inches table from  
24    one side to the other because a garment is for  
25    a 6'8 person. I make sometimes somersault,

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1 you know, just to get to something to be able  
2 to cut it quickly. And sometimes I have  
3 15 minutes to get back in the car and to drive  
4 with it to Allentown because a person need it  
5 badly, I will make the trip of two hours, an  
6 hour back and forth, you know, to put it in.

7 You think I care what label I  
8 took? You think that was on my mind? On my  
9 mind is not to get killed on the highway, on  
10 my mind is to get to the factory to put it in,  
11 sew it, say good-bye, thank you, get back in  
12 the car, put the heat transfer on back at the  
13 factory in Norristown, package it, examine it,  
14 package it and ship it to the customer.

15 Q. Why do you have Sweat It Out labels  
16 that have the 70/30 information at all on it?

17 A. It's -- it's really for insurance.  
18 Why should I throw them away? They're all  
19 interchangeable. Why should I throw them  
20 away? It's money, I paid money.

21 It's like you buy something and  
22 you put it in the freezer and you don't  
23 like -- you don't like turkey hot dog, okay?  
24 But you put it in. Expiration date is 2021.

25 Q. Okay. Let me -- let me -- we're --

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1 I would simply like to know why  
2 you changed your signature block to include  
3 Cool Compression just days before you sued  
4 Nike?

5 MR. WAGNER: Objection, compound.

6 THE WITNESS: I guess Samantha  
7 found out that she did not do it and she  
8 change it. She probably did not even tell me  
9 that. I have no idea. My sales is going down  
10 and that's what I have to worry about? I  
11 don't take a salary, and that's what I have to  
12 worry about?

13 (Whereupon, a document was marked,  
14 for identification purposes, as Defendant's  
15 Exhibit 84.)

16 BY MS. DURHAM:

17 Q. I'm showing you what's been marked  
18 Defendant's Exhibit 84. What is this, Mr.  
19 Nathan?

20 A. Um-hmm.

21 Q. What -- what is it?

22 A. That's 1900AK performance compression  
23 tights.

24 Q. And --

25 A. But I don't see the color of it.

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1 Q. All right.

2 Was this product actually ever  
3 sold?

4 A. I don't see the color of it. No, we  
5 did not put Cool Compression heat transfer  
6 label on one leg and Sweat It Out on the other  
7 leg. We put the Cool Compression care label  
8 inside and the Sweat It Out was visible  
9 outside. That was -- I bet you that was one  
10 of those orange colors or purple colors that I  
11 bought some material to do for like a spring  
12 sale, something, and advertise it on the  
13 Internet.

14 Q. But -- but you never sold this  
15 product; is that correct?

16 A. I don't think so, no.

17 Q. Okay.

18 A. I think I have it on one of the  
19 tables in the back in the warehouse.

20 (Whereupon, a document was marked,  
21 for identification purposes, as Defendant's  
22 Exhibit 85.)

23 BY MS. DURHAM:

24 Q. I'm showing you what's been marked  
25 Defendant's Exhibit 85. Do you recognize this

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1 document?

2 A. Yeah.

3 Q. What is this?

4 A. That's a 3019, but I think that's the  
5 child. I don't know. The photo does not tell  
6 me really.

7 Q. Okay.

8 Is -- is this something that was  
9 ever sold?

10 A. That's the 3019. Was it sold? I'm  
11 not sure. I'm really not sure. I'll have to  
12 look at that table where I put the one with  
13 the adhesive label, the logo with the person.  
14 We don't put them like that in stock.

15 Q. Okay.

16 A. So we made like a promo on that, but  
17 not really -- you know, we might do it right  
18 now in a new Internet that we are building  
19 website. We took some photo last month and we  
20 did blend it with people with a Cool  
21 Compression logo and the Sweat It Out for the  
22 photo shoot.

23 Q. Okay.

24 So you think this may be a recent  
25 photo or something that's old?

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1           A.    I -- I -- I really -- honest to God,  
2   I really wouldn't know. I mean, I really  
3   wouldn't know. From the picture, I really  
4   don't know if it's an adult or a child. It  
5   look like a large picture, but it look like a  
6   small neck, so I'm really -- I'm not sure.

7           Q.    But a shirt like this with the Cool  
8   Compression man logo and the Sweat It Out  
9   logo is not something that you regularly  
10   sell --

11          A.    No.

12          Q.    -- correct?

13          A.    Right.

14          Q.    When was your recent photo shoot you  
15   just mentioned?

16          A.    Right, for the new website.

17          Q.    When? When was it, the date?

18          A.    The 10th, Saturday, October 10th.

19                   (Whereupon, a document was marked,  
20   for identification purposes, as Defendant's  
21   Exhibit 86.)

22   BY MS. DURHAM:

23          Q.    I'm showing you what's been marked  
24   Defendant's Exhibit 86, and I'll just  
25   represent for the record that there is a whole

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1 bunch of images that you produced that are  
2 similar like this and we just selected some of  
3 them for this Exhibit 86.

4 Would you take a look at them and  
5 tell me --

6 A. Yeah. Those I know exactly what they  
7 are.

8 Q. Okay. What are they?

9 A. They are for the Cool Compression  
10 website.

11 Q. Okay. That Cool Compression website  
12 that was never operational?

13 A. Exactly. So that's really from 2006  
14 and '7.

15 Q. Okay.

16 A. That's for the medical.

17 (Whereupon, a document was marked,  
18 for identification purposes, as Defendant's  
19 Exhibit 87.)

20 BY MS. DURHAM:

21 Q. I'm showing you what's been marked  
22 Defendant's Exhibit 87. Do you recognize this  
23 document, sir?

24 A. Yeah.

25 Q. What is it?

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1 page?

2 Q. We're back on page 44410, the  
3 Statement of Use.

4 A. Right, right, okay.

5 Q. Okay.

6 And you say you've never seen this  
7 document?

8 A. No.

9 Q. Okay. "The applicant is submitting  
10 one specimen for the following -- for the  
11 class showing the mark as used in commerce on  
12 or in connection with any item in the class."

13 A. Where does it say that? Where are  
14 you reading?

15 Q. It's -- it's right here, right -- see  
16 where it says, "Specimen-1 and Specimen-2"?

17 A. Okay.

18 Q. Okay?

19 And then there's a -- a link to  
20 the specimens which start on page NIKE 44411  
21 and go through NIKE 44413.

22 A. Um-hmm.

23 Q. Okay?

24 What -- what is that shown in the  
25 specimens?

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1       A.     Okay. That's the board. That's the  
2     one that will go -- that the garment will go  
3     inside. It's a long board, maybe about  
4     24 inches by 8, and it's folded in half and  
5     the garment goes in and it goes in a bag. I  
6     think I sent you a picture.

7       Q.     Yeah. This -- this is the one we  
8     talked about earlier where you said it was  
9     never -- never actually used; right?

10    A.     Exactly.

11    Q.     Okay.

12               Then why is it being submitted to  
13     the Trademark Office --

14    A.     Because at that time, we --

15    Q.     -- at -- let -- let me finish.

16    A.     Yeah.

17    Q.     Why was it being submitted to the  
18     Trademark Office in June of 2007 as proof that  
19     you were using the mark as of that time?

20    A.     Because we were still thinking of  
21     using it.

22    Q.     Okay.

23    A.     At that -- we didn't use it happen in  
24     2008.

25    Q.     But you weren't actually using it in

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1 2007?

2 A. Well, well, the plan was to use it.  
3 The -- the website was going up, they were  
4 late by a year. We -- we -- we -- we got the  
5 boards. I mean, we spent thousands of dollars  
6 on it.

7 Q. Okay.

8 But the point is, is that you told  
9 the Trademark Office that it was in use, but  
10 it really wasn't; correct?

11 MR. WAGNER: Objection, misstates  
12 the documents, lacks foundation, calls for  
13 speculation.

14 THE WITNESS: I don't think -- I  
15 don't think -- I don't think that there was  
16 any intent to lie here. That was in a  
17 process. Process sometimes take a year to  
18 two. What shall I tell them? Hold, hold your  
19 horses, give me another year?

20 MS. DURHAM: Well, yeah, that is  
21 actually what you do.

22 THE WITNESS: Well, nobody told me  
23 that.

24 MS. DURHAM: Okay.

25 BY MS. DURHAM:

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1           Q.    Well, your trademark lawyer, Mr.  
2   Lehrer, does he file lots of trademark  
3   applications?

4                   MR. WAGNER:  Objection, calls for  
5   speculation, lack of foundation.

6                   THE WITNESS:  I have no idea what  
7   he files.  You mean for me?

8                   MS. DURHAM:  Yes.

9                   THE WITNESS:  He just filed the  
10  names that I have.

11                   MS. DURHAM:  Okay.

12  BY MS. DURHAM:

13           Q.    Well, so did he reach out to you and  
14  ask you if your mark was in use?

15           A.    No.  He send me the paper, you know,  
16  he said we have to sign it because it's being  
17  used, and I said, you know, we are working on  
18  it.

19                   He said, okay, send me the stuff  
20  and I did.

21                   When will you use it?  And I said,  
22  you know, I don't know.  In the next year or  
23  so.

24           Q.    So you said he sent you the paper.  I  
25  -- did he send you the certificate?

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1           A.    No, the paper said sign and send it  
2 back to him.

3           Q.    Okay.

4                   What -- what papers were there  
5 that you signed?

6           A.    I have no idea what it is. It's a  
7 letter that, you know, we have to send with  
8 the specimen.

9           Q.    Okay.

10                   Do you have any problem providing  
11 that letter to me?

12           A.    Why would I?

13                   MR. WAGNER: We talked about it.  
14 We're willing to do that.

15                   THE WITNESS: Yeah.

16                   MS. DURHAM: Okay.

17                   THE WITNESS: Sure.

18                   MS. DURHAM: Yes, I'd appreciate  
19 that.

20 BY MS. DURHAM:

21           Q.    And so did you, to your recollection,  
22 tell -- tell Mr. Lehrer at that time that your  
23 mark was in use?

24           A.    No. I'm sure I did not tell him it's  
25 in use. It's in use is -- mean that you sold

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1 it, okay? I haven't sold it yet. I haven't  
2 had the Internet yet, the website, Cool  
3 Compression.

4 Q. So why do you think Mr. Lehrer would  
5 have filed a Statement of Use at the Trademark  
6 Office if it wasn't in use?

7 A. Because I told him we're going to use  
8 it, absolutely. I was all definitely we're  
9 going to use it.

10 Q. Okay.

11 But a lawyer that files trademark  
12 applications knows that there's a big  
13 difference between intending to use it and  
14 actually using it. In fact, that's why your  
15 application was originally filed, based on  
16 intent to use. This was the big important  
17 change about you putting it -- telling the  
18 Trademark Office that it had been put in use.  
19 So I will ask the question again.

20 Why would Mr. Lehrer file a  
21 Statement of Use with the Trademark Office if  
22 you were just still intending to use the mark?

23 A. I don't know.

24 Q. Did you authorize this filing?

25 A. Did I authorize it? I don't know. I

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1     **have to look at the paper. If I have a**  
2     **signature, I authorized it.**

3             MS. DURHAM: It would have been  
4     nice to have those documents for this  
5     deposition.

6             When will we have them, Ben?

7             MR. WAGNER: Those are privileged  
8     documents which we're going to give you  
9     anyways. As soon as I can copy them.

10            MS. DURHAM: Okay. Are you giving  
11    them because you are relying on advice of  
12    counsel and -- and waiving privilege as to  
13    those documents?

14            MR. WAGNER: I don't know what you  
15    mean by advice of counsel.

16            MS. DURHAM: Well, I -- I guess  
17    I'm -- I'm just trying to clar -- are you --

18            MR. WAGNER: We're not --

19            MS. DURHAM: You're not claiming  
20    privilege.

21            MR. WAGNER: We are not asserting  
22    privilege as to those documents.

23            MS. DURHAM: Okay. Understood.

24    BY MS. DURHAM:

25            **Q. Let's look at NIKE 44397. It's a**

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1     **single good in this registration?**

2                   MR. WAGNER:  Objection,  
3     argumentative.

4                   THE WITNESS:  I don't remember.

5     BY MS. DURHAM:

6           **Q.    Did you personally review this**  
7     **Declaration?**

8           **A.    This?**

9           **Q.    Yes.**

10          **A.    No.  I don't see any -- any of the**  
11     **one, just the specimen.**

12          **Q.    Okay.**

13                   But -- but Mr. Lehrer would not  
14     have signed this Declaration without checking  
15     with you; correct?

16          **A.    Well, checking with me is the letter.**

17          **Q.    Okay.  The -- this letter that --**  
18     **that now your attorney, Ben, is going to**  
19     **provide to me?**

20          **A.    Yeah.**

21          **Q.    And you --**

22          **A.    So I really don't know.  I mean, the**  
23     **only thing the letter is check, one checkmark,**  
24     **specimen, sign, one copy for me, one copy for**  
25     **him.  So I really can't tell you.  I mean, I**

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1 don't know.

2 Q. Are you telling me that the only  
3 communication you had with Mr. Lehrer about  
4 submitting this document that we're looking at  
5 is this letter exchange?

6 A. About -- about submitting it to the  
7 patent office, yeah.

8 Q. Okay.

9 A. Yeah, I mean, I -- I did not see any  
10 of the pages that you showed me here.

11 MS. DURHAM: Okay. And I'll  
12 reiterate for the record my request that we  
13 need that -- that correspondence.

14 (Whereupon, a document was marked,  
15 for identification purposes, as Defendant's  
16 Exhibit 93.)

17 BY MS. DURHAM:

18 Q. Okay.

19 Mr. Nathan, I'm showing you what's  
20 been marked Defendant's Exhibit 93. This is  
21 the -- well, in -- actually, let's look  
22 specifically at 44503 within that exhibit.

23 A. 44453?

24 Q. 44503.

25 A. Okay.

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1 Q. So this is a Trademark/Service Mark  
2 Application on the Principal Register for  
3 Serial Number 78963029 that is the application  
4 that corresponds to your Registration 3416236.

5 Do you see that this is the  
6 application that was filed on August 29th,  
7 2006, for the Cool Compression and the -- the  
8 stylized man logo?

9 A. Yes.

10 Q. And do you see here where it says  
11 about halfway down the page, this is an Intent  
12 to Use application?

13 A. Yes.

14 Q. Um-hmm. "The applicant has a bona  
15 fide intention to use," and then it lists all  
16 your 25, Class 25 goods there?

17 A. Um-hmm.

18 Q. Okay.

19 And is that the list you developed  
20 with the intention to use the man logo on all  
21 of those goods?

22 A. Yes.

23 Q. Let's flip to NIKE 44492 so we can  
24 take a look at the Notice of Allowance for  
25 this application.

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1 A. 444 what?

2 Q. 92.

3 A. Okay.

4 Q. And do you see here this is  
5 indicating that the Trademark Office is  
6 allowing your trademark application for the  
7 Cool Compression man logo for this entire list  
8 of Class 25 goods, the same list that we just  
9 looked at the -- in the other filing?

10 A. Um-hmm, yeah.

11 Q. Okay.

12 Let's look at then the Statement  
13 of Use that you filed on June 18th, 2007,  
14 which we can find at NIKE 44487.

15 A. Okay.

16 Q. Here it says, "This Allegation of Use  
17 is being filed after a Notice of Allowance has  
18 issued. The applicant, Lontex Corporation,"  
19 it states your address, "is using or is using  
20 through a related company or licensee the mark  
21 in commerce on or in connection with the goods  
22 and/or services as follows:"

23 And it lists that whole Class 25  
24 description we've talked about -- well,  
25 actually, it doesn't list it, it refers to the

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1 Notice of Allowance that has the whole list  
2 that we looked at at 44492. Are you following  
3 me?

4 A. Yeah, but I don't see the list here.

5 Q. Okay. Well, look at 44492 and you'll  
6 see the entire Class 25 list.

7 A. Right. Okay.

8 Q. Okay?

9 And at the time this statement was  
10 filed on June 19th, 2007, that Cool  
11 Compression man logo was not actually in use  
12 with all of those goods; is that correct?

13 A. Right.

14 Q. Okay.

15 A. Correct.

16 Q. Then why did you submit the Statement  
17 of Use to the Trademark Office saying that it  
18 was?

19 MR. WAGNER: Objection, assumes  
20 facts not in evidence.

21 THE WITNESS: Well --

22 MR. WAGNER: Lacks foundation.

23 THE WITNESS: -- we really -- we  
24 really actually thought that we were going to  
25 use it.

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1 MS. DURHAM: Okay.

2 BY MS. DURHAM:

3 Q. But that's what the Intent to Use  
4 application is for. Why would you submit a  
5 Declaration of Use when you were still only  
6 intending to use?

7 A. It's the same thing with the other  
8 one. I did not know that we cannot -- we have  
9 to do it all together.

10 Q. So do you, again, think that you have  
11 some correspondence with your attorney that  
12 would --

13 A. On the insignia, sure. It's the same  
14 thing. Everything come through me.

15 Q. Okay.

16 So in other words, you believe you  
17 have correspondence from your attorney that  
18 led you to believe it was okay to submit a  
19 Statement of Use, even though you didn't have  
20 use?

21 A. I don't know if I put it that way.  
22 The letter doesn't say that. The letter says  
23 what it says. I don't remember what the  
24 letter says now in front of me.

25 Q. Okay. Well, we'll come back and talk

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## C E R T I F I C A T E

I do hereby certify that I am a Notary Public in good standing, that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS by hand and official seal  
this 2nd day of December, 2019.

<%8008,Signature%>

\_\_\_\_\_  
Notary Public

Job No. 3568330

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1 Ben L. Wagner, Esq.

2 bwagner@troutman.com

3 December 2, 2019

4 RE: Lontex Corporation v. Nike, Inc.

5 11/14/2019, Efraim Nathan (#3568330)

6 The above-referenced transcript is available for  
7 review.

8 Within the applicable timeframe, the witness should  
9 read the testimony to verify its accuracy. If there are  
10 any changes, the witness should note those with the  
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of  
13 Deponent and Errata and return to the deposing attorney.  
14 Copies should be sent to all counsel, and to Veritext at  
15 cs-ny@veritext.com

16  
17 Return completed errata within 30 days from  
18 receipt of testimony.

19 If the witness fails to do so within the time  
20 allotted, the transcript may be used as if signed.

21  
22 Yours,  
23 Veritext Legal Solutions  
24  
25

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